Joel H. Levitin
Kevin J. Burke
Michael R. Carney
CAHILL GORDON & REINDEL LLP
Eighty Pine Street
New York, New York 10005
Telephone: (212) 701-3000
Facsimile: (212) 269-5420
E-mail: jlevitin@cahill.com
E-mail: kburke@cahill.com
E-Mail: mcarney@cahill.com

Attorneys for Bank of America, N.A.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
NEFF CORP., *et al.*,	)	Case No. 10-12610 (SCC)
Debtors.	)	Jointly Administered

RESPONSE OF BANK OF AMERICA, N.A., TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND LETTERS OF CREDIT, (B) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (C) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED CREDITORS, AND (D) SCHEDULING A FINAL HEARING

Bank of America, N.A., in its capacity as the administrative and collateral agent (the "Agent") for the lenders (the "DIP Lenders") under that certain senior secured debtor-in-possession credit agreement dated as of May 17, 2010, by and among the above-captioned debtors and debtors-in-possession (the "Debtors") and the DIP Lenders (as amended or otherwise modified from time to time, together with all schedules, exhibits, annexes, and addenda thereto, the "DIP Agreement"), hereby responds to the objection (the "Objection") of the official committee of unsecured creditors (the "Committee") to the Motion of the Debtors for Entry of

Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing and Letters of Credit (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to Pre-Petition Secured Lenders, and (D) Scheduling a Final Hearing [Docket No. 24] (the "DIP Motion").[1] In response to the Objection, and in further support of entry of an order granting the DIP Motion on a final basis (the "Final Order"), the Agent respectfully represents as follows:

RESPONSE

1. The Objection mischaracterizes the eight-month negotiation process underlying the DIP Motion and relies upon, and is replete with, baseless misrepresentations and innuendo surrounding, among other things, the nature of (and history behind) the post-petition financing (the "DIP Financing") provided for under the DIP Agreement and related documents (the "DIP Documents"). The terms of the DIP Financing were extensively negotiated at arms' length. The Committee's suggestion that any party involved in negotiating the terms and conditions of the DIP Financing conspired (i) to take control of the company at unsecured creditors' expense and (ii) to prevent the avoidance of liens granted to various lenders is simply wrong. In addition to the utter lack of any evidence whatsoever to substantiate a conspiracy or other scheme asserted in the Objection, the Committee does not allege (nor does it even allude to) any law or facts to support its assertion that any transactions could be avoided as fraudulent transfers or otherwise, let alone that such purported avoidance actions are worth "hundreds of millions of dollars," as the Committee purports to believe. (Objection ¶ 26.)

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[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion.

2. For all the hyperbole in the Objection, the reality here is that unsecured creditors are likely out of the money, and the Objection is nothing more than a misguided attempt by the Committee to use the approval process for the DIP Financing to garner for its constituents a recovery in these cases to which they are not entitled. This Court should not countenance such behavior and should enter the proposed Final Order.

The DIP Lenders Are Not a Party to Any Scheme to Launch a Takeover of the Debtors at the Unsecured Creditors' Expense

3. The crux of the Objection is the Committee's assertion that the DIP Financing is part of a scheme by the ABL Lenders, the First Lien Term Loan Lenders, the DIP Lenders, and the Debtors' management team to engineer a takeover of the Debtors, while at the same time protecting the ABL Lenders and First Lien Term Loan Lenders from having their first-priority, senior liens avoided pursuant to purported facts theories of law the Committee never articulates. (*E.g.*, Objection ¶¶ 1, 2, 41, and 58.) In an effort to sidestep the fact that the arguments in the Objection are thin to the point of invisibility, the Committee resorts to inflammatory and unsupported allegations designed to paint the ABL Lenders, the First Lien Term Loan Lenders, and the DIP Lenders as grasping, overreaching, and in complete control of the Debtors and this Chapter 11 process. (*E.g.*, Objection ¶¶ 1, 4, 5, 41, and 56.) The Committee's accusations in that regard are unsupported and entirely untrue.

4. In reality, on account of the Debtors' severe liquidity problems, the Debtors, in late autumn of 2009, approached the Agent (which also serves as the agent under the First Lien Credit Agreement) to explore the possibility of obtaining debtor-in-possession financing for a potential Chapter 11 reorganization. (Levenson Dep. 64:23-65:13; 65:18-25;

66:6-15; 67:11-22, June 25, 2010.)[2] The Debtors' approach initiated a lengthy series of arms' length negotiations to reach the current terms of the DIP Financing among the Debtors, the Agent, and the DIP Lenders—each acting in their own best interests—to reach a deal. (Levenson Dep. 68:2-9.) The DIP Financing and the form and substance of the DIP Documents were thoroughly negotiated by all parties thereto over the course of nearly a year. (Levenson Dep. 89:10-80:17.) All the terms and conditions of the DIP Financing—including, without limitation, the roll-up, the Section 506(c) waiver, the liens on proceeds of avoidance actions, the adequate protection, and the DIP Financing fees—reflect a hard-fought, heavily negotiated consensus among all interested parties, including among the Debtors and the DIP Lenders, as well as among the syndicate of the DIP Lenders themselves. (*See* Levenson Dep. 68:1-69:13.) The Committee's flawed business judgment should not be substituted for the Debtors' business judgment.

5. The sheer length of the negotiations and the myriad drafts of the DIP Documents are all indicative that this process was anything but the far-flung conspiracy the Committee alleges, and the Committee offers no evidence—nor can it—to the contrary. This Court should not permit the Committee, on account of the unsupported allegations set forth in the Objection, to hold up final approval of a transaction that will enable the Debtors to begin the difficult process of restructuring so that they can emerge from Chapter 11 successfully.[3]

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[2] Relevant pages from the June 25, 2010, deposition of Richard Levenson are attached hereto as Exhibit A.

[3] Notably, the Committee has failed to consider what would likely actually transpire if this Court sustained the Objection. The Debtors have no independent motion to use cash collateral pending, and any such motion would likely be opposed by, at the very least, the ABL Lenders, resulting in a highly contested hearing. Even if the Committee prevailed

(continued)

The Committee Has Not Demonstrated the Viability of Any Avoidance Actions

6. Apparently in recognition that unsecured creditors are out of the money, the Committee implicitly pins any hopes of a recovery to its constituency on the avoidance of the liens granted to the ABL Lenders and the First Lien Term Loan Lenders on account of the 2007 leveraged buyout and the 2008 exchange offer, respectively.

7. Without citation to any facts or law, the Committee apparently takes it as a given that such transactions are avoidable. The Committee has not alleged in the Objection any basis for the avoidance of either transaction. The Committee merely rests on the perceived rhetorical weight of the terms "LBO" and "exchange offer," presuming that all such transactions implicate avoidable transfers. They do not. *See Kipperman v. Onex Corp.*, No. 05-cv-01242, 2010 WL 761227, at *7-8 (N.D. Ga. March 2, 2010) (leveraged buyouts are not per se fraudulent); *see also*, *Brandt v. B.A. Capital Co. LP (In re Plassein Int'l Corp.)*, 366 B.R. 318, 325-26 (Bankr. D. Del. 2007) (dismissing complaint to avoid LBO as fraudulent transfer).

8. It is also presumptuous for the Committee to seek automatic standing to initiate any such causes of action without first establishing a basis for doing so. *See, e.g.*, *In re STN Enters.*, 779 F.2d 901, 904 (2d Cir. 1985) ("The Bankruptcy Code . . . contains no explicit authority for creditors' committees to initiate adversary proceedings."); *Official Comm. of Unsecured Creditors v. Morgan Stanley & Co. (In re Sunbeam Corp.)*, 284 B.R. 355, 374 (Bankr. S.D.N.Y. 2002) ("a finding that allowing a committee to pursue a debtor's claim would

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on its Objection, it would take weeks for the Debtors to have access to cash that they need *today* to fund their operations, which is assuming that the Debtors could provide adequate protection to the DIP Lenders for amounts advanced during the interim period or to the First Lien Lenders—open questions in the context of an independent cash collateral motion.

be necessary and beneficial to the resolution of the bankruptcy proceeding is required in all instances."). Before bringing any adversary proceeding to prosecute actions belonging to the Debtors' estates, the Committee would be required to move for leave to file such proceeding and make the requisite showing that "the Debtors unjustifiably failed to bring suit or abused its discretion in not suing on colorable claims likely to benefit the . . . estate." *Official Comm. Of Equity Sec. Holders of Adelphia Commc'ns Corp. v. Official Comm. Of Unsecured Creditors of Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 544 F.3d 420, 424 (2d Cir. 2008) (citations omitted). The Committee has not, and likely could not, satisfy such standard.

The Challenge Period and Funds Available in Connection Therewith Are Adequate

9. As mentioned above, the goal underlying the Objection and the Committee's conduct in these cases to date is to garner for its constituents a recovery in these cases to which they are not entitled. The Committee will likely attempt to wreak havoc (indeed, it already has) in these cases to achieve that goal. The Committee's strategy, though ill-conceived, is not unusual in cases where unsecured creditors are out of the money, although it is somewhat atypical (and dangerous) for unsecured creditors to employ this strategy at the very beginning of a case, as the Committee has chosen to do here. *See U.S. Bank Nat'l Assoc. v. Wilmington Trust Co. (In re Spansion, Inc.)*, 426 B.R. 114, 124 n.16 (Bankr. D. Del. 2010) ("It has been said that in such vigorously disputed cases, '[j]unior creditors invoke expensive and time-consuming procedures merely to extract a payout exceeding their entitlements.'") (citation omitted).

10. Given the Committee's wasteful use of estate assets to date, the DIP Lenders are reluctant to agree to additional time or funds (beyond the existing $50,000) to be set aside for the Committee to "investigate" possible avoidance actions related to the 2007 leveraged

buyout or the 2008 exchange offer, and the DIP Lenders are under no obligation to do so. The Committee has demonstrated that it cannot use the funds available to it to fulfill its duties to the unsecured creditor body responsibly, and the Committee should not be given a free hand to engage in a quixotic pursuit of potentially baseless avoidance actions with the DIP Lenders' money. Indeed, if there actually is a viable claim as the Committee asserts, then it should not need funding to pursue such claim on account of the presumably extensive proceeds that would be available.

11. If the Committee's behavior in these cases thus far is indicative of things to come, this case will focus less on the critical restructuring of the Debtors and their successful emergence from Chapter 11 as a reorganized going concern, and more on the Debtors', the DIP Lenders', and the Agents' defending themselves in the wake of scattergun litigation designed to accomplish little more than to further the Committee's goal of extracting an undeserved and unwarranted recovery for its constituents at any cost. This Court should not permit the realization of such a scenario. The DIP Lenders agreed to fund a reorganization, not potentially open-ended and frivolous litigation brought by out-of-the-money unsecured creditors who have nothing left to lose.

JOINDER

12. The Agent also hereby joins the Debtors' reply to the Objection [Docket No. 196] and paragraphs 3 and 4 of the response of Wayzata Investment Partners and Apollo Capital Management to the Objection [Docket No. 198].

WHEREFORE, the Agent respectfully requests that the Court (i) overrule the Objection, (ii) enter an order granting the relief sought in the DIP Motion on a final basis, and (iii) grant such other and further relief as may be just and proper under the circumstances.

Dated: New York, New York
June 29, 2010

Respectfully submitted,

CAHILL GORDON & REINDEL LLP

/s/ Michael R. Carney

Joel H. Levitin
Kevin J. Burke
Michael R. Carney
Eighty Pine Street
New York, New York 10005
Telephone: (212) 701-3000
Facsimile: (212) 269-5420
E-mail: jlevitin@cahill.com
E-mail: mcarney@cahill.com

Attorneys for Bank of America, N.A.

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
NEFF CORP., et al,	)	
	)	Case No.
Debtors.	)	10-12610 (SCC)
----------	)	

** CONFIDENTIAL - PROFESSIONAL EYES ONLY **

30(b)(6) DEPOSITION OF

BANK OF AMERICA, N.A.

by

RICHARD LEVENSON

New York, New York

Friday, June 25, 2010

Reported by:

MAYLEEN CINTRON, RMR, CRR, CLR

JOB NO. 31501

June 25, 2010
1:11 p.m.

30(b)(6) DEPOSITION OF BANK OF AMERICA, N.A. by RICHARD LEVENSON, taken by the Official Committee of Unsecured Creditors, held at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, before MayLeen Cintron, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public of the State of New York.

APPEARANCES:

KIRKLAND & ELLIS LLP
Attorneys for Debtors
601 Lexington Avenue
New York, New York 10022
BY: BRIAN S. LENNON, ESQ.
-and-
555 California Street
San Francisco, California 94104
BY: MARK E. McKANE, ESQ.

PACHULSKI STANG ZIEHL & JONES LLP
Attorneys for Official
Committee of Unsecured Creditors
780 Third Avenue
New York, New York 10017
BY: ILAN D. SCHARF, ESQ.

APPEARANCES: (Cont'd)

STROOCK & STROOCK & LAVAN LLP
Attorneys for Wayzata Investment Partners and
Apollo Capital Management
180 Maiden Lane
New York, New York 10038
BY: KENNETH PASQUALE, ESQ.
JAYME T. GOLDSTEIN, ESQ.

CAHILL GORDON & REINDEL LLP
Attorneys for Agent: Bank of America
80 Pine Street
New York, New York 10005
BY: KEVIN J. BURKE, ESQ.

ALSO PRESENT:
Michael Thatcher, Mesirow Financial
Ofir Nitzan, Miller Buckfire & Co.

R. LEVENSON - PROFESSIONAL EYES ONLY

RICHARD LEVENSON,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

THE REPORTER: Please state your full name for the record.

THE WITNESS: Richard Levenson.

EXAMINATION BY
MR. SCHARF:

Q. Good morning, Mr. Levenson. My name is Ilan Scharf, I'm an attorney at Pachulski Stang Ziehl & Jones and we represent the Official Committee of Unsecured Creditors in the Neff Corporation Chapter 11 case.

I'm sure you have been prepared by counsel yesterday. Did you meet with counsel to prepare for this deposition?

A. We spoke.

Q. Did you speak yesterday?

A. We spoke briefly yesterday.

Q. Have you ever been deposed?

A. Yes.

Q. How many times?

R. LEVENSON - PROFESSIONAL EYES ONLY

That weekend, when we interacted with Houlihan specifically as advisors for Apollo and Wayzata, I'm aware that we went to our control room and formed trees. Now, I assumed trees were formed because other parties, other interested parties in the Company might continue to seek financing from Bank of America. But from that moment in time on, I was on the Apollo/Wayzata tree.

Q. When you're talking about that weekend, is that the March 22nd weekend?

A. That's correct.

Q. When you say you "formed trees," can you please clarify that?

A. When you are providing this kind of financing, there is potential for conflicts if multiple parties are involved. When we were dealing with the Company in Miller Buckfire, the Company's advisors, we were aware that there was more than one party looking at this transaction. And the negotiation did not assume that there was a specific party that was going to be chosen as the Plan sponsor.

R. LEVENSON - PROFESSIONAL EYES ONLY

Had they chosen another party, we -- we would have, again, formed trees. I guess I have to be specific about "formed trees."

Because of conflicts, when you get to a certain point in time, you cannot be offering financing to multiple parties once you enter into direct conversations with those parties or their advisors. Does that satisfactorily answer what forming trees is?

Q. Yes. Thank you.

As of that March 22nd conference call, would you characterize that conference call as a direct negotiations with Apollo and Wayzata?

MR. BURKE: Objection to form.

MR. SCHARF: Withdrawn.

Q. You said that once you had direct negotiations with a potential party --

MR. BURKE: He said discussions. You're trying to make it negotiations.

Q. When you have direct discussions with another party, you can't talk to other parties because of conflicts, correct?

R. LEVENSON - PROFESSIONAL EYES ONLY

A. That's correct.

Q. And that decision was made with respect to Wayzata and Apollo after the March 22nd phone call?

A. I think the call was actually the 19th. It was a long weekend for me.

But yes, that was the call that resulted in the formation of trees.

Q. Prior to that call, had you had any preliminary discussions or meetings with any other parties?

A. No.

Q. Prior to that call, had the Debtors explored any restructuring alternatives with Bank of America?

A. I'm not certain what you're referring to. Are you talking about capital infusions, seeking additional capital or something like that?

Q. Let's start with those.

A. Okay.

Q. Had the Company sought additional capital from Bank of America?

A. We -- we had provided the Company

R. LEVENSON - PROFESSIONAL EYES ONLY

with the opportunity to deal with what I would call the onset of liquidity issues with a variety of potential solutions, one of which would have been the raising of capital.

I was not directly involved to know if they had any such discussions.

Q. When did the Company experience an onset of liquidity issues?

A. I don't recall specifically.

Q. Was it after the 2008 exchange?

A. Yes, it was subsequent to the 2008 exchange, yes.

Q. Was it during 2009?

A. I just don't recall.

Q. Was it prior to 2010?

A. It was prior to 2010, yes.

Q. Prior to the March 19th phone call, had the Company approached you about providing DIP financing?

A. Yes.

Q. Who approached you on behalf of the Company?

A. It would have been Mark Irion and the gentlemen from Miller Buckfire.

R. LEVENSON - PROFESSIONAL EYES ONLY

Q. Who from Miller Buckfire?
A. Who specifically approached me? I'm not sure. But my dealings were with Ronen Bojmel and Fitzner and Ofir.
Q. And when did the Company approach you?
A. Sorry. I got to add another name. Lloyd Sprung (ph).
I don't recall specifically. It probably would have been around the fall, late summer, fall of '09. It might have been as late as December, it might have been as early as September. I don't specifically recall.
Q. Do you recall what the Company was looking for at the time?
A. When these discussions started, the Company was looking for relief under the swap reserve that had been imposed, and the time necessary to deal with their -- their oncoming liquidity concerns.
Q. Had the Company's onset of liquidity concerns occurred before they approached you?

R. LEVENSON - PROFESSIONAL EYES ONLY

A. Again, it's -- it was like seeing a train coming. The liquidity problems had not unearthed themselves to the point that they were out of money. But it was apparent that if operations continued, performance continued at its current level and there was no economic rebound, that the Company was going to run out of liquidity in the foreseeable future.
Q. At the time, late fall of 2009 when the Company approached you, did they broach the topic of Bank of America providing DIP financing for a Chapter 11 case?
A. Yes, they did.
Q. Did they present specific terms that they were looking for?
A. I would say I don't recall. I would say in general, they described the desire, if other solutions were not achieved, to have a Debtor-in-Possession facility that would allow them to reorganize.
Q. Did they present any information in connection with this request for DIP financing?

R. LEVENSON - PROFESSIONAL EYES ONLY

A. Again, I don't specifically recall. I just don't recall how the process got started, whether we put forth a proposal, they put forth a presentation. I don't recall. I know that we put forth a proposal and they put forth presentations, but I don't remember how -- who started the formal delivery process.
Q. The original proposal, regardless of who it came from, did that involve a DIP Facility and an Exit Facility?
A. I am not certain. It is possible that it did not, but it did move to that stage reasonably quickly.
Q. At what point were you negotiating for both a DIP and an Exit Facility?
A. We were -- we were negotiating with the Company and their advisors. They advised us that they had a commitment for a junior DIP financing from the First Lien Term Loan Lenders.
That's not something that asset-based lenders like to see happen. It causes us to really lose control of the

R. LEVENSON - PROFESSIONAL EYES ONLY

matter. So us, it is almost the equivalent of a priming DIP financing. So to be more compelling to the Company, we thought it made sense to combine a DIP Facility and an Exit Facility.
It also allowed us to put pressure on the Banks within the Syndicate who really -- many of whom expressed a lack of desire to participate in the exit financing by tying the DIP financing and the exit together, it allowed us to motivate the Banks to be on both sides of the transaction.
Q. Which of the members of the Syndicate expressed a lack of desire to participate in the exit financing?
A. Any lack of desire; in other words, a reluctance at any point in the process? Certainly, Union Bank of California, certainly Regents Bank, I'll call it raw Bank of Scotland/Citizens, GMAC.
Q. Did Wells Fargo express a lack of desire to participate in the exit financing?
A. I think not. I think they got it.
Q. Did any members of the Syndicate

R. LEVENSON - PROFESSIONAL EYES ONLY

MR. BURKE: Yes.

A. Same thing as Wells.

Q. Are there any records or documents that indicate the amount of participation that GE and Wells had in negotiating this loan?

A. I'm not sure what you mean by records and documents.

Q. You testified that they were active participants in negotiating this loan, correct?

A. Yes.

Q. Are there any documents, including an e-mail, that would reflect how active they were?

A. Sure.

Q. Did GE Capital have more involvement in negotiating this loan than Wells Fargo?

A. I would say no.

Q. So GE had less involvement in negotiating than Wells Fargo, correct?

A. No.

Q. No? They had the same --

R. LEVENSON - PROFESSIONAL EYES ONLY

A. Equal involvement.

Q. Did members of Wells Fargo attend meetings with the Debtors?

A. I don't believe that they physically attended, but they would have participated by phone.

Q. Did representatives of GE Capital participate by phone?

A. I don't recall if they participated by phone or in person. But clearly Wells is in California, GE is in Connecticut. We had really a limited number of face-to-face meetings. I don't remember who the attendees were and who dialed in and who showed up.

Q. Did BAS have a more active role than Wells and GE?

A. I don't think it is a valid question. I don't think I can make that assessment. It is a valid question; I don't think I can answer it.

Q. Why is this arranger fee being paid to Banc of America Securities as opposed to Bank of America NA?

R. LEVENSON - PROFESSIONAL EYES ONLY

A. It is really internal bookkeeping.

Q. When you were negotiating the terms of this loan, were you acting as a representative of Bank of America NA and Banc of America Securities?

A. I am a dual employee, but functionally I was representing Bank of America NA.

Q. And Bank of America NA is not collecting an arranger fee, correct?

A. That's correct.

Q. Will Bank of America's arranger fee be rolled up or accounted for as part of BAS' arranger fee?

A. That's correct.

Q. Bank of America N.A. and BAS negotiated the terms of this loan with the Debtor, correct?

A. They were amongst the parties that negotiated the agreement with the Debtor and certainly would be described as the leader.

Q. Did representatives of Bank of America and BAS spend more time negotiating the terms of this loan than the other lenders

R. LEVENSON - PROFESSIONAL EYES ONLY

in the Syndicate?

A. Absolutely.

Q. How much more time?

A. Substantially more time.

Q. Double?

A. I would think yes, yes.

Q. Triple?

A. Possibly.

Q. And Bank of America and BAS representatives were the only lender that had face-to-face or direct communications with the Debtors and its advisors with respect to this loan, correct?

A. No.

MR. BURKE: Objection to form.

THE WITNESS: Sorry.

MR. BURKE: You can answer.

A. No.

Q. Which other lenders had direct communications?

A. Wells Fargo and GE.

Q. Were these verbal communications?

A. Yes.

Q. How many of those communications

R. LEVENSON - PROFESSIONAL EYES ONLY

did they have?

A. A number of, you know, conference calls where, you know, documents are presented and turned and renegotiated.

Q. More than 10 conference calls?

A. Certainly.

Q. More than 20 conference calls?

A. Probably.

Q. More than 30?

A. Possibly.

Q. More than 50?

A. Now you're getting to the outside limit. But possible.

Q. Over the course of how many weeks is this?

A. Probably eight months.

Q. What type of role did UBS and GMAC take in negotiating this loan?

A. Much less so. And their negotiations were through Bank of America rather than directly.

Q. Are these five institutions, BAS, Wells Fargo, GE, GMAC and UBS, the five largest members of the Syndicate?

R. LEVENSON - PROFESSIONAL EYES ONLY

A. Yes.

Q. Is it your understanding that these letters are confidential?

A. Yes.

Q. Is it your understanding that the United States Trustee has asked that they be provided to the Court?

MR. McKANE: Objection to form.

Q. You can answer.

MR. BURKE: You can answer if you know.

A. Yes, I'm not aware.

Q. At whose request have these letters been kept confidential?

A. I do not know specifically. I believe it is Bank of America, Wells and GE. Certainly Bank of America is one of the parties that asked that they be kept confidential.

Q. Why does Bank of America want these documents to be kept confidential?

A. Because we don't like the market to know what arrangement fees we and the other syndicate leaders are being paid. It's

R. LEVENSON - PROFESSIONAL EYES ONLY

common practice.

Q. Are you concerned that the amount of the Syndicate fees has already been disclosed?

A. I'm not sure I understand the question.

Q. Withdrawn.

Exhibit 8 Paragraph 4, discloses the amount of these fees, correct?

A. Correct.

Q. Are you still concerned that the market should not be aware of the fee letters?

A. Yes.

Q. Why?

A. Because the fee letters describe specifically the arrangement fees paid to the three co-arrangers and then specifically to BAS.

Q. So it is not the amount of the fees, it is who the fees are being paid to?

A. No. It is the amount of the fees and who they're being paid to. And it is not a function of the size of the fees that they

R. LEVENSON - PROFESSIONAL EYES ONLY

are unusually high or embarrassingly low, but it is just market practice not to disclose those fees.

(Committee Exhibit 13, 5/14/2010 e-mail chain Re: Neff, BofA0006296-6300, marked for identification, as of this date.)

MR. SCHARF: I have marked as an exhibit a multipage document bearing Bates numbers BofA 6296 through 6300.

These documents were produced to the committee under the proviso they be kept Attorneys Eyes Only, and we have not shared them with our financial advisors or investment bankers or anybody else prior to today.

However, since there are non-attorneys who are Committee professionals in this deposition, Mr. Burke has agreed that any of the exhibits that we use in today's deposition can be kept as Professional Eyes' Only subject to execution of a confidentiality agreement between Bank